

MICHAEL S. TODD
Claimant

MILLARD REFRIGERATED SERVICES
Respondent

SENTRY INSURANCE COMPANY
Insurance Carrier

KANSAS WORKERS COMPENSATION FUND

The sole issue to be considered on appeal is the liability of the Kansas Workers Compensation Fund for any or all of the compensation, medical expenses and court costs paid by respondent and its insurance carrier for claimant's accidental injury dated February 5, 1993.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds and concludes that the Award of the Administrative Law Judge should be affirmed.

Claimant injured his low back on February 5, 1993, when boxes weighing ten (10) to twelve (12) pounds fell off a double-stacked pallet, striking claimant in the back and neck. Claimant received treatment from several physicians and was ultimately referred to Dr. Koprivica. As of November 2, 1993, Dr. Koprivica released claimant with permanent restrictions limiting him to sedentary or light work only. Respondent was unable to return claimant to any type of work under the restrictions imposed by Dr. Koprivica.

The evidence indicates that claimant had a prior low back injury. The evidence also establishes that respondent had knowledge that claimant's low back interfered with his ability to perform his duties for respondent. Respondent's witnesses have testified and produced records indicating various occasions when claimant left work or did not come to work because of low back problems. The record also includes testimony that claimant requested and was granted change in his job duties because of problems with lifting. The Administrative Law Judge has described in detail respondent's knowledge of claimant's impairment and the Appeals Board hereby adopts the findings by the Administrative Law Judge. The Appeals Board considers those findings to support the conclusion claimant was a handicapped employee and the respondent had knowledge of claimant's pre-existing impairment sufficient to satisfy the requirements of K.S.A. 1992 Supp. 44-567.

The record also indicates that claimant's current injuries probably or most likely would not have occurred but for his pre-existing impairment. This conclusion is based upon the findings and opinions of Dr. Koprivica, the treating physician. The Appeals Board, therefore, concludes, as did the Administrative Law Judge, that the Kansas Workers Compensation Fund should be liable for all of the benefits paid or payable pursuant to the settlement agreement reached between claimant and respondent.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Steven J. Howard dated April 4, 1995, shall be, and is hereby, affirmed in favor of respondent/carrier and against the Kansas Workers Compensation Fund in the sum of \$37,192.67, plus reimbursement by the Kansas Workers Compensation Fund to respondent/carrier of the cost of all depositions and hearing transcripts contained in the record upon presentation by respondent/carrier to the Kansas Workers Compensation Fund of the court reporters' billing statements.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: H. Wayne Powers, Overland Park, Kansas
James E. Phelan, Kansas City, Kansas
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director